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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,626	06/26/2006	Kazuhiro Niwano	292367US2PCT	8461
22850 7590 05/13/2010 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER KAVLESKI, RYAN C				
ART UNIT 2475		PAPER NUMBER		
NOTIFICATION DATE 05/13/2010		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/584,626

Applicant(s)

NIWANO, KAZUHIITO

Examiner

Ryan C. Kavleski

Art Unit

2475

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/CD)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

Response to Amendments

1. This communication is in response to Applicant's reply filed under 3 CFR 1.111 on 4/9/10. Claim 18 remains pending.

Information Disclosure Statement

2. The information disclosure statement filed 11/30/2009 fails to comply with 37 CFR 1.98(a)(1), which requires the following: (1) a list of all patents, publications, applications, or other information submitted for consideration by the Office; (2) U.S. patents and U.S. patent application publications listed in a section separately from citations of other documents; (3) the application number of the application in which the information disclosure statement is being submitted on each page of the list; (4) a column that provides a blank space next to each document to be considered, for the examiner's initials; and (5) a heading that clearly indicates that the list is an information disclosure statement. The information disclosure statement has been placed in the application file, but the information referred to therein has not been considered.

3. The information disclosure statement filed 11/30/2009 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al. (US Pub 2004/0192308)(Lee hereafter).

Regarding claim 18, Lee teaches a communication method having a variable modulation method (the system uses adaptive modulation and coding and HARQ)[paragraph 0046] comprising:

a requesting step of transmitting a signal [refer Fig. 2; 204] requesting data transmission from a mobile station (user equipment (UE))[refer Fig. 2; 112] to a base station [refer Fig. 2; 110] when there is data to be transmitted from the mobile station to the base station (the base station determines the availability and data rate of the EUDCH for the UE and performs scheduling and sends an assignment data rate for the UE to send data [paragraph 0008][paragraph 0010];

a notifying step of transmitting a signal [refer Fig. 2; 206] notifying the data transmission from the mobile station to the station, when receiving the signal requesting data transmission (the UE sends control information to the base station to provide information for the data transmission, such as OVFS code, modulation, data size and HARQ)[paragraph 0010];

a data transmission step of transmitting the data [refer Fig. 2; 207] to be transmitted from the mobile station to the base station when receiving the signal notifying the data transmission (the data transmission occurs after the control information has been sent)[paragraph 0010]; and

a retransmission notifying step of transmitting a signal [refer Fig. 2; 209] representing whether the transmitted data is to be retransmitted or not (the base station sends a ACK or NACK back to the UE, in which a NACK prompts a retransmission of the data)[paragraph 0012], when the signal representing an instruction to retransmit the data is transmitted, the data is retransmitted from the mobile station to the base station with a same modulation method (i.e. coding rate) as one used for the data transmission (in implementing the improved HARQ over existing procedures [paragraph 0045], the system, when using HARQ, allows a transmitter to perform an initial transmission and a retransmission using the same format, allowing the same coding rate to be applied for the initial transmission and the retransmission [paragraph 0049]).

However, Lee's disclosure of the EUDCH establishment procedures are described as procedures described in another embodiment as related art, in which Lee's adaptive modulation methods are an improved HARQ scheme for uplink procedures to be used for EUDCH [paragraph 0045].

It would have been obvious to one of ordinary skill in the art given the disclosure of Lee of the EUDCH establishment procedures as known in the art to combine with Lee's improved HARQ scheme that is to be implemented using an EUDCH for uplink communications. One would be motivated to do so to provide the combination of prior

art elements according to known methods to obtain predictable results [refer paragraph 0020 and 0045].

Response to Arguments

2. Applicant's arguments, see pages 3 and 4, filed 4/9/2010, with respect to the rejection of claim 18 under 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Lee et al.

1. Regarding claim 18, applicant argues that the applied references does not teach the claim limitation, namely, "data is retransmitted from the mobile station to the base station with a same modulation method as a modulation method for the data transmission".

In response to the above-mentioned argument, examiner respectively directs the applicants attention to Lee et al., which discloses in an uplink retransmission system, in which a transmitter performs an initial transmission and retransmission using the same format, mainly, using the same coding rate (i.e. a modulation method) applied for the initial transmission and the retransmission [paragraph 0049].

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan C. Kavleski whose telephone number is 571-270-

3619 and fax number is 571-270-4619. The examiner can normally be reached on Mon-Fri 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dang T. Ton can be reached on 571-272-3171. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ryan Kavleski
/R. C. K./
Examiner, Art Unit 2475

/DANG T TON/
Supervisory Patent Examiner, Art Unit 2475/D. T. T./
Supervisory Patent Examiner, Art Unit 2475